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Supreme Court
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SCPW-20-0000106

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

DAVID E. AUSTIN, Petitioner,

vs.

THE HONORABLE R. MARK BROWNING, Judge of the Circuit Court of the
First Circuit, State of Hawai‘i, Respondent Judge,

and

GERDA KOSCHWITZ, Respondent.

ORIGINAL PROCEEDING
(T. NO. 19-1-0047)

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Upon consideration of petitioner David Eric Austin’s petition for writ of mandamus, filed on February 28, 2020, the documents attached thereto and submitted in support thereof, and the record, it appears that, the record presented to this court does not demonstrate that the respondent judge committed a flagrant and manifest abuse of discretion in denying the motion to disqualify. Petitioner, therefore, is not entitled to the requested extraordinary writ. See Kema v. Gaddis, 91 Hawai‘i 200, 204-05, 982 P.2d 334, 338-39 (1999) (where a court has discretion to act, mandamus will not lie to interfere with or

control the exercise of that discretion, even when the judge has acted erroneously, unless the judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject properly before the court under circumstances in which he or she has a legal duty to act); TSA Int'l Ltd. v. Shimizu Corp., 92 Hawai'i 243, 252, 990 P.2d 713, 722 (1999) ("Decisions on recusal or disqualification present perhaps the ultimate test of judicial discretion and should thus lie undisturbed absent a showing of abuse of that discretion.").

Accordingly,

IT IS HEREBY ORDERED that the petition for writ of mandamus is denied.

DATED: Honolulu, Hawai'i, May 8, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

